

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

ELAINE CHAO, SECRETARY OF LABOR,
United States Department of Labor

05 11075 RGS

Plaintiff,

v.

LAURIAT'S, INCORPORATED RETIREMENT
PLAN & TRUST,

Respondent.

* CIVIL ACTION

* FILE NO.

RECEIPT #

AMOUNT \$

SUMMONS ISSUED *yes*

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK

DATE *5/23/05*

COMPLAINT FOR EQUITABLE RELIEF

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C § 1001, et seq., and is brought to enjoin acts and practices which violate the provisions of Title I of ERISA, and to obtain other appropriate equitable relief to redress violations and enforce the provisions of that Title pursuant to Section 502(a)(5).

JURISDICTION, PARTIES and VENUE

2. Jurisdiction over this action is conferred upon the Court by Section 502 (e)(1) of ERISA, 29 U.S.C. § 1132 (e)(1).

3. The Lauriat's, Incorporated Retirement Plan and Trust ("the Plan") is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3). The Plan was sponsored by Lauriat's, Incorporated, an employer that employed employees covered by the Plan.

4. Venue for this action lies in the District of Massachusetts where the Plan was administered, pursuant to Section (e)(2) of ERISA, 29 U.S.C. § 1132 (e)(2).

FACTUAL ALLEGATIONS

5. Lauriat's, Incorporated ("Lauriat's") was the Plan Administrator of the Plan under the Plan documents.

6. In 1998 Lauriat's, Incorporated filed for bankruptcy and its assets were liquidated. The bankruptcy proceeding was dismissed in January, 2002. Lauriat's has been completely defunct since that time.

7. As Plan Administrator, Lauriat's, Inc. had a duty to take steps to ensure the continuing prudent administration of the Plan.

8. Subsequent to the bankruptcy, to the best of the Secretary's knowledge and belief, at no time did Lauriat's appoint a fiduciary to replace it as Plan Administrator. Further, no individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets.

9. To the best of the Secretary's knowledge and belief the assets of the Plan are being held by State Street Bank where said assets totaling over \$125,000.00 are invested in a variety of mutual funds.

10. Since Lauriat's became defunct and abandoned its fiduciary role as Plan Administrator, participants and beneficiaries of the Plan have not been able to gain access to or information about their individual account balances, nor have they been able to receive distributions of their account balances.

11. To the best of the Secretary's knowledge the Plan has not been terminated.

12. Because of the facts and circumstances set forth in Paragraphs Nos. 1-11 above, the Plan presently does not have a named fiduciary or trustee with exclusive authority and discretion to manage and control its operation and administration as required by ERISA § 402(a), 29 U.S.C. § 1102 (a), and ERISA § 403 (a), 20 U.S.C. § 1103 (a), and there is no one other than this Court with the authority to appoint a new fiduciary with such necessary authority.

13. Because of the facts and circumstances set forth in Paragraph Nos. 1-11 above, participants are unable to access their account balances and to obtain their appropriate distributions pursuant to the terms of the Plan, and the Plan's termination cannot be achieved. Moreover, as there presently is no person or entity who has even attempted to act in a fiduciary capacity toward the Plan, there is no prospect for relief for the beneficiaries whose monies are being held by the Plan but who, in the absence of a fiduciary, may not receive distributions of their funds.

WHEREFORE, pursuant to Section 502(a)(5) of ERISA, 29 U.S.C. § 1132 (a)(5), Plaintiff prays that the Court:

A. Appoint a successor fiduciary who shall be recommended by the United States Department of Labor to administer the Plan, and effectuate the distribution of Plan assets to the participants and beneficiaries and the Plan's termination.

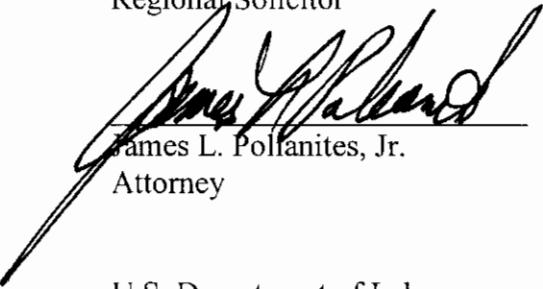
B. Provide such other relief as may be just and equitable.

Post Office Address:
U.S. Department of Labor
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JFK Federal Building
Room E-375
Boston, Massachusetts 02203

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Howard Radzely
Solicitor of Labor

Frank V. McDermott, Jr.
Regional Solicitor


James L. Pollanites, Jr.
Attorney

U.S. Department of Labor
Attorneys for Complainant

DATE: May 23, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Elain Chao, Secretary of Labor v. Lauriat's, Incorporated Retirement Plan and Trust

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

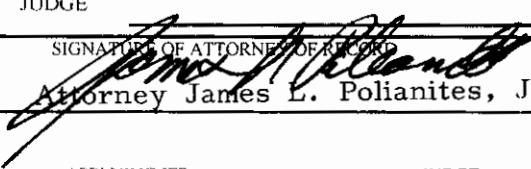
ATTORNEY'S NAME Attorney James L. Polianites, Jr.

ADDRESS Office of the Regional Solicitor, JFK Federal Building Room E-375

Boston, Massachusetts 02203

TELEPHONE NO. 617-565-2500

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Elaine Chao, Secretary of Labor, United States Department of Labor,		DEFENDANTS Lauriat's, Incorporated Retirement Plan and Trust County of Residence of First Listed Defendant <u>8</u> Suffolk (IN U.S. PLAINTIFF CASES ONLY)		
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.		
(c) Attorney's (Firm Name, Address, and Telephone Number) 617-565-2500 Office of the Regional Solicitor JFK Federal Building - Room E-375 Boston, Massachusetts 02203		Attorneys (If Known)		
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)		
<input checked="" type="checkbox"/> U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4	
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5	
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6	
IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 340 Marine <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
V. ORIGIN (Place an "X" in One Box Only)	Appeal to District Judge from Magistrate Judgment			
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>29 U.S.C. Sec. 1001</u>				
VI. CAUSE OF ACTION Brief description of cause: <u>Complaint for Appointment of Fiduciary</u>				
VI. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
VII. RELATED CASE(S) IF ANY		(See instructions): JUDGE	DOCKET NUMBER	
DATE		SIGNATURE OF ATTORNEY OF RECORD  Attorney James L. Polianites, Jr.		
May 23, 2005				
FOR OFFICE USE ONLY				
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE